

CITY OF LAKE FOREST

**REQUEST FOR PROPOSAL
FOR
CONSTRUCTION MANAGEMENT SERVICES
FOR THE LAKE FOREST CIVIC CENTER PROJECT**

November 21, 2012

CITY OF LAKE FOREST

REQUEST FOR PROPOSAL

The City of Lake Forest ("City") seeks proposals from qualified firms for Construction Management Services for the Lake Forest Civic Center Project, which will be a Multiple-Prime project.

Responses must conform with the requirements of this Request for Proposal ("RFP"). The City reserves the right to waive any irregularity in any proposal or to reject any proposal which does not comply with this RFP. Modifications to the RFP, including, but not limited to the scope of work, can be made only by written addendum issued by the City. Selection of the proposer will be made solely by the City on criteria determined by the City.

The use of the term "firm" throughout this document means individual proprietorship, partnership, limited liability company, corporation or joint venture.

By submitting a project proposal, the proposer agrees to all of the terms of the RFP and Agreement (Appendix A), unless exceptions to the RFP or Agreement are stated by the proposer in its project proposal. The successful proposer will be required to enter into an Agreement (Appendix A) which will include the requirements of this RFP as well as other requirements. The City reserves the right to reject any proposal(s) exceptions or changes to the Agreement or Request for Proposal.

INTRODUCTION

The City of Lake Forest, California, is requesting proposals from qualified construction management firms to provide services during the pre-construction, bidding, construction, and post-construction phases of the project. The Multiple Prime Construction Manager (MPCM) will provide necessary input to the project design, contractor selection and oversight of the contractor's performance while representing the best interests of the City in this important civic project to ensure a quality, cost effective project that is completed on schedule and within budget. Neither the firm, or firms, selected as MPCM, nor any of their officers, principals or affiliates will be eligible to bid on, or contract with the City with respect to any of the multi-prime contracts.

General Background

Since incorporation, the City has leased space for City Hall at three different locations. Since late 2003, City Hall has been located at 25550 Commercentre Dr., one building in a five-building business park, on a shared parcel of land. City Hall currently resides in a multi-tenant building, and occupies the entire first floor of the building, and approximately half of the second floor of the building, for a total area of 40,864 square feet.

Over the past several years, the City has taken various steps to determine its long-term office space needs and evaluate permanent Civic Center alternatives as part of the Opportunities Study. The Opportunities Study is a comprehensive planning process that re-zones nearly 838 acres of land zoned for business and industrial use on five properties in Lake Forest. The zoning changes allow for a new plan with residential uses and facilities such as a sports park and community/civic center, gaining over \$100 million in public benefits for the community.

As part of the Opportunities Study, the Development Agreement with the Irvine Ranch Water District (IRWD) included transfer of a 9-acre portion of the property located at the extension of Indian Ocean Road, intended for future use as the Civic Center site. IRWD submitted an Irrevocable Offer of Dedication (“IOD”) for the Civic Center site, required pursuant to the terms of a Development Agreement negotiated between the City and IRWD. The City deemed the IOD complete in April 2011 and recorded the document.

A Needs Assessment and Space Planning Program has been completed and presented to City Council, along with a conceptual plan. The City now wishes to select a qualified construction management firm to provide construction management services for the new Lake Forest Civic Center and to work with the City Council, City Staff and community toward the successful completion of this significant milestone project.

PROJECT DESCRIPTION

To view the Civic Center Needs Assessment and Program, as well as the Conceptual Site Plan, visit <http://agenda2009.city-lakeforest.com/SIREPub/agdocs.aspx?doctype=agenda&itemid=9576>.

The proposed project is a Civic Center consisting of three buildings:

- Community Center (33,000 square feet)
 - Includes Senior Center (11,000 square feet)

- Council Chambers/Performing Arts Venue (12,500 square feet)
- Community Policing/Emergency Operations Center/Administrative Offices (47,000 square feet)

City Departments/Offices to be included in the Administrative Offices include: City Council, City Manager, City Attorney, City Clerk, Community Services, Development Services, Economic Development/Community Preservation, Finance, Management Services, Public Works and Police Services (administrative office/meeting space for contracted law enforcement personnel).

The Civic Center project site will be a 9.18-acre rough graded pad located at the extension of Indian Ocean Road (Exhibit 1).

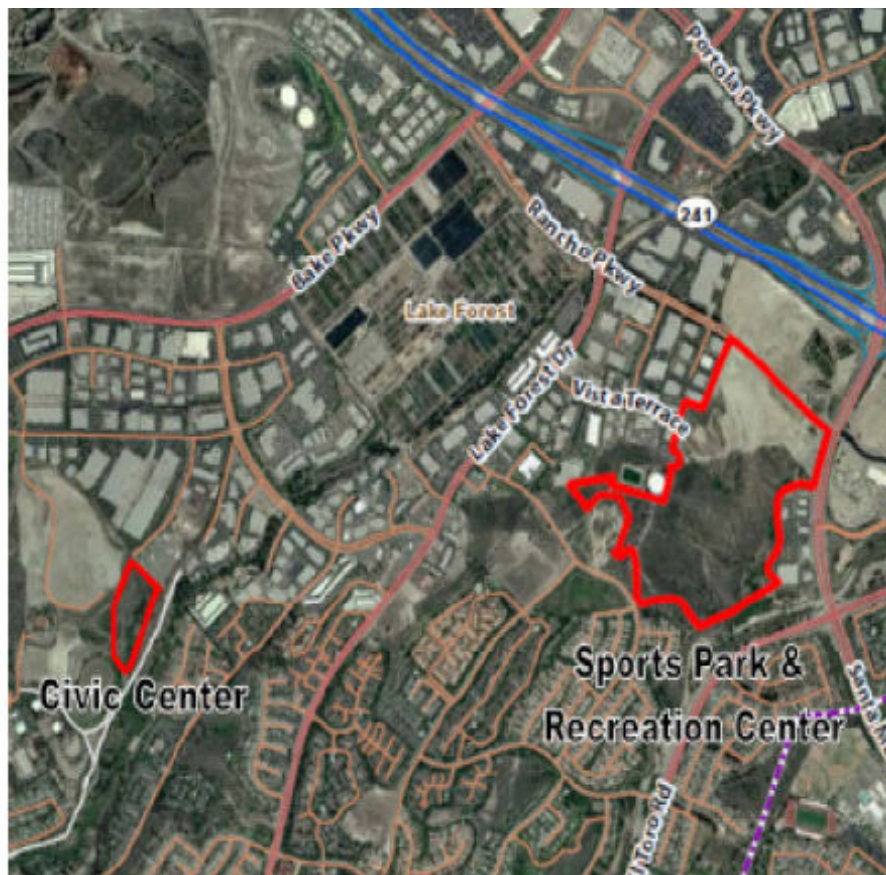


Exhibit 1. Civic Center Location

DELIVERY METHOD

The MPCM shall be hired by the City under a professional services agreement. The project shall be publicly bid to prime contractors, as led by the MPCM, in individual bid packages for trade subcontractors. The MPCM shall perform the services listed in this RFP.

The MPCM will report directly to the Deputy City Manager/Director of Management Services, who is the Overall Project Director. The City will manage the Architect, and the MPCM will assume the day-to-day management of the project throughout each phase, and will work closely with the Architect who will provide architectural, engineering, interior, technology, and landscape design services.

1. ABOUT THE CITY

The City of Lake Forest is located in southern Orange County, California, in the area commonly referred to as the Saddleback Valley, with a population of approximately 82,000. It is the County's thirty-first city and the second largest city within the Saddleback Valley, encompassing 16.6 square miles. The City of Lake Forest's fiscal year begins on July 1 and ends on June 30.

The City was incorporated in 1991, operates under the Council/Manager form of government and is considered a contract city. The five Members of the City Council are elected at-large. They serve staggered four-year terms, with the Mayor being selected annually from among the Council Members. The Council meets on the first and third Tuesdays of each month.

The firm's principal contact with the City of Lake Forest will be Debra D. Rose, Deputy City Manager/Director of Management Services, or a designated representative, who will coordinate the assistance to be provided by the City of Lake Forest to the proposer.

City Hall is located at 25550 Commercentre Drive, Suite 100, Lake Forest, California 92630. The telephone number is (949) 461-3400, and the fax is (949) 461-3511. The City website address is www.lakeforestca.gov.

2. PROPOSAL SCHEDULE

The schedule is as follows:

Proposals Due at City Hall	January 15, 2013 4:00 p.m.
Oral Presentations/Interviews	February 12, 2013
Negotiations Complete/ Agreement signed by Proposer	February 26, 2013
City Council Selection*	March 19, 2013

*The City expects, but does not guarantee, that the decision on selection of a firm will be made by the City Council on the date indicated above.

3. **PROCEDURE FOR SUBMITTING PROJECT PROPOSALS**

A. Time, Place and Format

Proposals must be received at City Hall no later than 4:00 p.m. on the date indicated in Section 2. Proposals received in the mail after 4:00 p.m. on the date indicated in Section 2, regardless of the date of their postmarks, will be rejected. Proposals must:

- not be folded, tabbed or bound
- show page numbers for all pages in the proposal
- include ten (10) copies punched for a standard 3-ring binder, and place copies in binders
- be on 8-1/2"x11", 20-24 lb. white paper (do not submit covers)
- be submitted in one or more envelopes, each of which clearly:
 - ✓ states "Architectural and Design Services for the Lake Forest Civic Center Project Proposal"
 - ✓ identifies the proposer
 - ✓ states the number of the envelope and the total number of envelopes submitted by the proposer
- the envelope must be addressed as follows:

City of Lake Forest
Attn: City Clerk
25550 Commercentre Drive, Suite 100
Lake Forest, CA 92630
- the successful Proposer must submit the Scope of Work and Fee in electronic format (MS Word or other format acceptable to the City) in addition to the paper copy, upon request.

If hand delivered, address as above and deliver to the City Clerk receptionist on the first floor of City Hall.

Proposals must address the requirements of the RFP in the exact order set forth in Section 4. They should be as concise as possible and must not contain any promotional, advertising or display material.

B. Opening of Responses

All proposals will be opened and considered within two weeks after the deadline date shown in Section 2 using evaluation procedures set forth in Appendix D.

4. DATA TO BE SUBMITTED WITH PROJECT PROPOSALS

The content and sequence of the information contained in each copy of the proposal shall be as follows:

A. Letter of Transmittal

Include your firm's understanding of the work to be performed. In addition, state why your firm believes itself to be the best qualified to perform the services requested. Also, state the Management Contact (Representative authorized to sign an agreement for your firm) and Project Manager (person responsible for day-to-day management of the project).

B. Table of Contents

Include a clear identification of the material by section and by page number.

C. Summary Sheet

1. This section of the proposal must include a fully-completed copy of the Summary Sheet included with this RFP (Appendix B).
2. Provide the name, title, experience and qualifications of the personnel who will be assigned to the project.
3. Provide the resumes of the Management Contact with the City and the Project Manager (person responsible for day-to-day work on the project).

D. Allocation of Resources

Provide a conceptual plan for services to the City that you believe are appropriate for the City. Indicate features, skills and/or services which distinguish your firm and make it the better choice for the City. Indicate how the resources of your firm (e.g., number and type of personnel allocated by hours) will be allocated for this project.

Submittal of a project schedule is required as part of the Allocation of Resources.

E. Scope of Work

Proposals must address all items set forth in Section 5 “Scope of Work.” The items must be addressed in the order in which they appear in Section 5 of this RFP. Additional information which, in your opinion, should be included must be clearly identified.

a. Preconstruction/Design Services

Describe in detail how your team intends to manage the preconstruction/design process and provide: 1) cost control, 2) schedule control, 3) constructability reviews, 4) value engineering, 5) final cost estimate, 6) alternatives regarding cost guarantees, and 7) other preconstruction services proposed.

b. Construction Management Services

Describe in detail how your team intends to manage the construction process.

c. Project Close-Out and Post Construction Services

Describe in detail how your team intends to manage the project close-out and post construction services.

F. Exceptions to RFP

Proposers are required to prepare the Cost Proposal based on the specifications set forth in the RFP documents. In the event the Proposer takes exception to the RFP specifications or provisions included in Section 5 of this RFP or wishes to propose an alternative, they may set forth those exceptions or alternatives in the following manner:

- a. Each exception or alternative must be presented separately by stating the specific exception or alternative, the suggested changes to the service or program related to the exception or alternative, and the reason for the proposed exception or alternative. Proposers may submit the specific dollar change in each of the affected cost items, as proposed by the Proposer in this RFP, that would

take place if the exception or alternative was accepted by the City of Lake Forest.

G. References

Each firm must include the following references:

1. List similar services performed as the prime consultant for all similar organizations/entities (not to include the City of Lake Forest) in the last five years and when performed. Show names of organizations, and names and telephone numbers of persons who can be contacted with regard to the services you have provided.
2. List all similar public agencies (not to include the City of Lake Forest) for which contracts were terminated in the last three years. Show names of organizations and names and telephone numbers of persons who can be contacted. Firms may provide a brief explanation of the reason(s) for termination(s).

H. Certification of Proposals

Return a copy of the entire completed certification properly executed as provided for in Appendix C.

5. SCOPE OF WORK

The Scope of Work, as may be modified through negotiation and/or by written addendum issued by the City, will be made a part of the Agreement.

The MPCM's primary objective in this project will be to ensure the Civic Center that is ultimately built meets the community's needs and expectations of a well-designed and constructed facility. Throughout the process, the MPCM will be responsible for effective communication, coordination, quality control, cost efficiency, documentation, and timeliness. A description of the services required of the MPCM is provided in this section. This description is intended to provide the basis for the proposers to prepare a detailed scope of services to become a part of the Agreement to provide construction management services.

1. General Project and Construction Management

- a. Staff Assistance. Provide technical and managerial staff assistance to the City. Coordinate with and/or oversee various disciplines necessary to construct the project, including engineering, architecture, building construction, installation and inspection.
- b. Master Schedule. Prepare and maintain a master project schedule based on anticipated design and construction schedules, and integrate all reviews, approvals or other actions required by the City Council, review agencies and any other entities.
- c. Cost Control. Under direction of City, establish and implement cost estimating, monitoring and control procedures. Provide cost reports to City monthly or more frequently as needed.
- d. Design Checklist. Implement a design checklist to establish a systematic process with which to provide a thorough design and constructability review, and to communicate plan revisions and comments to design consultants.
- e. Document Control. Maintain relevant records, documents, minutes, funding compliance records, and correspondence.
- f. Meetings. Assist in the organization and scheduling of, attend, and keep minutes of all project-related meetings.
- g. Reports. Present or make available project scheduling, construction progress, submittals, change orders, and other reports deemed pertinent.

2. Preconstruction Services

- a. General. Provide services that relate to the organization and development of the project prior to the start of construction. Attend regular design review meetings.
- b. Plan Review: Value Engineering and Constructability. Provide plan review and constructability review at 35%, 65%, and 100% final design completion, with an emphasis on ensuring that the project can be completed within the established schedule and within the available budget. Provide a detailed analysis of all major project systems with an emphasis on possible value engineering items.
- c. Master Budgeting and Scheduling. Provide master budgeting and scheduling services including cash flow projections considering project revenues and expenditures based upon traditional project milestones.
- d. Detailed Construction Critical Path Method (CPM) Schedule. Produce a detailed construction CPM schedule to be

incorporated into the project documents including identification of the project critical path.

- e. Preliminary and Detailed Estimates. Provide continuous review and cost estimates of the ongoing design. Prepare conceptual cost estimates during the final design phase at 35%, 65%, and 100% design completion.
- f. Bidding Strategies. Consult with City staff to create bidding strategies with an emphasis upon timing, development of alternates, and bid package scoping.
- g. Project Accounting and Management Systems. In concert with City staff, develop the project accounting and budget management systems.
- h. General Conditions Document Preparation. The MPCM shall ensure that the General Conditions documents are suitable for the selected delivery method. The MPCM and the City shall coordinate this effort with City's legal counsel and obtain the City mandated approvals prior to publication.

3. Bid/Award Services

- a. Bidder Interest. Encourage bidder interest in the project and provide assistance with such issues as bonding, insurance, and Disabled Veteran Business Enterprise (DVBE) compliance.
- b. Bid Preparation. Review plans and specifications, and prepare and issue bid documents, working with City and Architect.
- c. Advertisements. Place both the project legal advertisements and any other pre-bid advertisements, working with the City.
- d. Pre-Qualification of Prime Contractors. Provide pre-qualification requirements, conduct contractor outreach, assist with reference checks, report on bidders acceptability, and prepare written evaluations and recommendations.
- e. Pre-bid Conferences. In cooperation with City personnel, conduct pre-bid and site visit meetings with potential bidders.
- f. Responses to Bidder Inquiries. Provide coordination of and, when possible, responses to bidder inquiries.
- g. Plan and Addenda Distribution. Distribute all plan sets, bid packages, and addenda.
- h. Bid Evaluation and Review. Review and evaluate all bids for responsiveness and certify the construction bid results.
- i. Contract Documents. Prepare contract packages for City review. Distribute and monitor completion of these contract packages.
- j. NOAs and NTPs. Issue Notices of Award (NOA) and Notices to Proceed (NTP) on behalf of the City.

4. Construction Services

- a. On-Site Construction Management and Coordination. Maintain a field office and sufficient personnel and equipment for daily onsite monitoring and coordination of construction activities, as an agent of the City. Provide an air-conditioned conference room adequate in size to hold contractor weekly meetings and Owner/Architect/MPCM/Prime meetings.
- b. Communication. Ensure regular coordination and communication between stakeholders.
- c. Permits, Bonds and Insurance. Assist contractors with obtaining required permits and verifying insurance and bond requirements.
- d. CPM Schedule Maintenance. The City may wish to award the prime contracts in phases so that the project schedule may be expedited. Maintain a detailed and date specific CPM schedule.
- e. Budget Control and Maintenance. Prepare regular, cumulative project budget reports with construction cost and soft cost data.
- f. Storm Water Pollution Prevention Plan. Ensure that responsibility for the Storm Water Pollution Prevention Plan is carried out.
- g. Agency Interface. Provide agency interface during construction process.
- h. Schedule of Values. Review and reconcile each contractor's schedule of values for each of the activities included in the construction schedule. Incorporate this report into the project standard billing package and use as the basis for all future progress payments during the construction phase.
- i. Monthly Billing Procedures. Generate a standard billing process and confirm billing information from the contractors. Review and obtain Inspector and Architect approvals. Forward monthly contractor billing packages to the City.
- j. Conduct Pre-Construction Conference. Conduct pre-construction conference for the benefit of the successful contractors. Provide information with regard to reporting procedures and site rules and regulations prior to the start of construction.
- k. Progress Monitoring and Reporting. Maintain a daily log of construction activities and conditions. Conduct and record weekly jobsite progress meetings, and submit work and cost progress reports at least monthly to the City.
- l. Provide ongoing Quality Assurance and Quality Control of all construction work at all times, including thorough documentation of findings and results. The MPCM will have primary responsibility for QA/QC on the project.

- m. Testing, Inspection and Special Services. Recommend, coordinate and monitor inspection and lab testing services, site surveys, utilities, geotechnical and other services, as required.
- n. Safety Program. Establish and implement job safety procedures, monitor contractors' compliance with safety program, maintain safe conditions at the site, respond to deficiencies and hazards, investigate and report on accidents.
- o. Project Record Documents. Coordinate and expedite all activities in connection with the contractors' obligation to provide "as-built" documents. Ensure that all as-builts are incorporated into a single set of Project Record Documents.
- p. Document Control. Establish and implement procedures for submittals, change orders, and requests for information. Maintain logs, files, and other necessary documentation.
- q. Shop Drawings & Submittals. Review and monitor the status of shop drawings and related correspondence.
- r. Administration of the Construction Contracts. Manage, supervise and coordinate all construction activities in accordance with the Construction Documents and project schedule. Provide onsite management of the project as necessary. Ensure that City requirements regarding collection of certified payrolls and subcontractor and material supplier releases are carried out.
- s. Information, Shop Drawings, Samples & Other Submittals. Log, process and expedite contractor requests for information and submittals. Analyze and evaluate time and cost impacts of suggestions for modifications, and make recommendations to the Architect and City.
- t. Change Order Review. Establish and implement a change order processing system that provides review of scope, price, and added contract time. Investigate, estimate, negotiate, recommend, and process contract change orders. Prepare and submit to Project Manager change order monitoring and impact reports describing work, cost and progress. The City will make all final decisions on change orders.
- u. Contractor Claims. Evaluate and mitigate all claims for additional cost or time due to any alleged cause.
- v. Project Meetings. Coordinate, attend, and keep minutes of weekly job-site progress meetings with the City, Architect, Inspector, and Contractors.
- w. Insurance Certificates. Monitor Contractors' insurance certificates for applicable coverages, endorsements, limits, and expiration dates.

- x. Contractors Licenses. Monitor Contractors' State contractor's licenses for current active status and expiration dates.

5. Project Close-Out and Post Construction Services

- a. Initial Start-Up, Punch Lists and Building Inspections. Supervise testing, balancing and start-up of utilities, equipment and operational systems, schedule job walks and building inspections, and assist Architect in preparing and managing punch lists for incomplete or defective work.
- b. Relocation. Coordinate the arrival and installation of City furnished materials and F&E. Provide coordination schedules for user relocation.
- c. User Training. Schedule and document all City training sessions. Arrange for supplementary information where needed. Arrange for Manufacturers to conduct training for maintenance and operations staff.
- d. Punch lists. In conjunction with the Architect, develop a punch list of defective work. Create a punch list schedule for completion. Verify completion of punch list items.
- e. Submit As-Builts. Review contractual requirements for As-Built Documents and create appropriate procedures to ensure the completeness and timeliness of these documents.
- f. Project Closeout and Warranties. Create Operation and Maintenance Manuals. Compile all contractor turn-over items and deliver to the City. Process and coordinate all post construction project warranty and guarantee claims.
- g. Final Lien Releases. Ensure compliance per requirements in the Construction Documents.
- h. Final Project Report and Payment. Recommend and prepare the final payment for contractors. Provide a final report to the City that includes: a financial summary of construction contracting, change orders, construction management and other services, and direct purchase items; a construction summary with schedule review; and a final acceptance summary of signed receipts from City staff of all closeout documents, furnishings fixtures and equipment (FF&E).
- i. User Complaints. Assist with response to initial post-occupancy complaints about missing or malfunctioning equipment or building components.
- j. Conduct year-end walk-through immediately prior to warranty period expiring and ensure corrections are completed.

6. DATA TO BE SUBMITTED WITH COST PROPOSALS

A separate, sealed Cost Proposal shall be submitted with the Project Proposal. The separate, sealed envelope shall be marked "Cost Proposal – Construction Management Services for the Lake Forest Civic Center Project." The successful Proposer must submit an electronic copy of the cost proposal in MS Word, Excel or other format acceptable to the City in addition to the paper copy upon request.

7. GENERAL REQUIREMENTS

A. Personnel

The Agreement and Letter of Transmittal shall identify the Management Contact (representative authorized to sign an agreement for your firm) and Project Manager (person responsible for day-to-day management of project). The successful proposer may change the Management Contact, Project Manager, and other supporting staff and specialists with prior written permission of the City.

B. Right to Request Additional Information

During the evaluation process, the City reserves the right, where it may serve the City's best interest, to request additional information or clarifications from proposers, or to allow corrections of errors or omissions. At the discretion of the City, firms submitting proposals may be requested to make oral presentations as part of the evaluation process.

C. Right to Reject Proposals

The City reserves the right without prejudice to reject any or all proposals.

D. Proposal Interpretations and Addenda

Any change to or interpretation of the RFP by the City will be sent to each firm or individual to whom an RFP has been sent and any such changes or interpretations shall become a part of the RFP for incorporation into any agreement awarded pursuant to the RFP.

E. Public Record

All proposals submitted in response to this RFP will become the property of the City upon submittal and a matter of public record pursuant to applicable law.

F. Additional Services

The Scope of Work describes the minimum work to be accomplished. Upon final selection of the firm, the Scope of Work may be modified and refined during negotiations with the City.

G. Conflict of Interest

By signing the Agreement, the successful proposer declares and warrants that no elected or appointed official, officer or employee of the City has been or shall be compensated, directly or indirectly, in connection with the award of the Agreement or any work for the proposed project. For the term of the Agreement, no elected or appointed official, officer or employee of the City, during the term of his/her service with the City and for two (2) years following his/her termination of office or employment with the City, shall have any direct interest in the Agreement, or obtain any present, anticipated or future material benefit arising therefrom.

H. Confidential Information

The City shall refrain from releasing Proposer's proprietary information ("Proprietary Information") unless the City's legal counsel determines that the release of the Proprietary Information is required by the California Public Records Act or other applicable state or federal law, or order of a court of competent jurisdiction, in which case the City shall notify Proposer of its intention to release Proprietary Information. Proposer shall have five (5) working days after receipt of the Release Notice to give City written notice of Proposer's objection to the City's release of Proprietary Information. Proposer shall indemnify, defend and hold harmless the City, and its officers, directors, employees, and agents from and against all liability, loss, cost or expense (including attorney's fees) arising out of a legal action brought to compel the release of Proprietary Information. City shall not release the Proprietary Information after receipt of the Objection Notice unless either: (1) Proposer fails to fully indemnify, defend (with City's choice of legal counsel), and hold City harmless from any legal action brought to compel such release;

and/or (2) a final and non-appealable order by a court of competent jurisdiction requires that City release such information.

APPENDIX A

AGREEMENT FOR CONSULTANT SERVICES

[The Agreement will be prepared by the City's Contract Administrator]

[[Model - Remove this Title When Used]]

CITY OF LAKE FOREST

PROFESSIONAL CONSULTANT SERVICES AGREEMENT

1. PARTIES AND DATE.

This Agreement is made and entered into this ____ day of _____, 20____, by and between the City of Lake Forest, a municipal corporation, organized under the laws of the State of California, with its principal place of business at 25550 Commercentre Drive, Suite 100, Lake Forest, California, 92630 ("City") and **[INSERT NAME OF COMPANY]**, a **[INSERT TYPE OF BUSINESS; I.E., CORPORATION (INCLUDE STATE OF INCORPORATION), LIMITED LIABILITY COMPANY, SOLE PROPRIETORSHIP, ETC.]**, with its principal place of business at **[INSERT ADDRESS]** ("Consultant"). City and Consultant are sometimes individually referred to herein as "Party" and collectively as "Parties."

2. RECITALS.

2.1 Consultant.

Consultant desires to perform and assume responsibility for the provision of certain professional **[INSERT TYPE]** consulting services required by the City on the terms and conditions set forth in this Agreement. Consultant represents that it is experienced in providing professional **[INSERT TYPE]** consulting services to public clients, is licensed in the State of California, and is familiar with the plans of City.

2.2 Project.

City desires to engage Consultant to render such professional **[INSERT TYPE]** consulting services for the **[INSERT NAME OF PROJECT, AND CONTRACT NUMBER, IF APPLICABLE]** project ("Project") as set forth in this Agreement.

3. TERMS.

3.1 Scope of Services and Term.

3.1.1 General Scope of Services. Consultant promises and agrees to furnish to the City all labor, materials, tools, equipment, services, and incidental and customary work necessary to fully and adequately supply the professional **[INSERT TYPE]** consulting services necessary for the Project ("Services"). The Services are more particularly described in Exhibit "A" attached hereto and incorporated herein by reference. All Services shall be subject to, and performed in accordance with, this Agreement, the exhibits attached hereto and incorporated herein by reference, and all applicable local, state and federal laws, rules and regulations. **[INSERT IF FEDERAL FUNDS WILL BE USED; OTHERWISE ALWAYS DELETE:** Additionally, Consultant shall comply with all Federal requirements applicable to the Services as set forth in Exhibit "A-I."]

3.1.2 Term. The term of this Agreement shall be from **[INSERT DATE]** to **[INSERT DATE]**, unless earlier terminated as provided herein. **[***INSERT THE FOLLOWING SENTENCE FOR MULTI-YEAR, AUTOMATIC RENEWAL NOT TO EXCEED THREE CONSECUTIVE YEARS; OTHERWISE, ALWAYS DELETE:** The City shall have the unilateral option, at its sole discretion, to renew this Agreement automatically for no more than **[INSERT NUMBER]** additional one-year terms.*****]** Consultant shall complete the Services within the term of this Agreement, and shall meet any other established schedules and deadlines. The City shall issue a Notice to Proceed on a phased basis. The term of the Agreement shall be from the start of the first Project phase as stated in the Notice to Proceed, through the later of completion of the Project phase, unless earlier terminated as provided herein. The term of the Agreement shall continue after issuance of a subsequent Notice to Proceed for future Project phases, subject to the same terms and conditions. Consultant shall complete the Services within the term of this Agreement, and shall meet any other established schedules and deadlines. In no event will the City be required to issue a Notice to Proceed for subsequent Project phases.

3.2 Responsibilities of Consultant.

3.2.1 Independent Contractor; Control and Payment of Subordinates. The Services shall be performed by Consultant or under its supervision. Consultant will determine the means, methods and details of performing the Services subject to the requirements of this Agreement. City retains Consultant on an independent contractor basis and not as an employee. Consultant retains the right to perform similar or different services for others

during the term of this Agreement. Any additional personnel performing the Services under this Agreement on behalf of Consultant shall also not be employees of City and shall at all times be under Consultant's exclusive direction and control. Neither City, nor any of its officials, officers, directors, employees or agents shall have control over the conduct of Consultant or any of Consultant's officers, employees, or agents, except as set forth in this Agreement. Consultant shall pay all wages, salaries, and other amounts due such personnel in connection with their performance of Services under this Agreement and as required by law. Consultant shall be responsible for all reports and obligations respecting such additional personnel, including, but not limited to: social security taxes, income tax withholding, unemployment insurance, disability insurance, and workers' compensation insurance.

3.2.2 Schedule of Services. Consultant shall perform the Services expeditiously, within the term of this Agreement, and in accordance with the Schedule of Services set forth in Exhibit "B" attached hereto and incorporated herein by reference. Consultant represents that it has the professional and technical personnel required to perform the Services in conformance with such conditions. In order to facilitate Consultant's conformance with the Schedule, City shall respond to Consultant's submittals in a timely manner. Upon request of City, Consultant shall provide a more detailed schedule of anticipated performance to meet the Schedule of Services.

3.2.3 Conformance to Applicable Requirements. All work prepared by Consultant shall be subject to the approval of City.

3.2.4 Substitution of Key Personnel. Consultant has represented to City that certain key personnel will perform and coordinate the Services under this Agreement. Should one or more of such personnel become unavailable, Consultant may substitute other personnel of at least equal competence upon written approval of City. In the event that City and Consultant cannot agree as to the substitution of key personnel, City shall be entitled to terminate this Agreement for cause. As discussed below, any personnel who fail or refuse to perform the Services in a manner acceptable to the City, or who are determined by the City to be uncooperative, incompetent, a threat to the adequate or timely completion of the Project or a threat to the safety of persons or property, shall be promptly removed from the Project by the Consultant at the request of the City. The key personnel for performance of this Agreement are as follows: **[INSERT NAME AND TITLE]**.

3.2.5 City's Representative. The City hereby designates **[INSERT NAME AND TITLE]**, or his/her designee, to act as its representative in all matters pertaining to the administration and performance of this Agreement

("City's Representative"). City's Representative shall have the power to act on behalf of the City for review and approval of all products submitted by Consultant but not the authority to enlarge the Scope of Work or change the total compensation due to Consultant under this Agreement. The City Manager shall be authorized to act on City's behalf and to execute all necessary documents which enlarge the Scope of Work or change the Consultant's total compensation subject to the provisions contained in Section 3.3 of this Agreement. Consultant shall not accept direction or orders from any person other than the City Manager, City's Representative or his/her designee.

3.2.6 Consultant's Representative. Consultant hereby designates **[INSERT NAME AND TITLE]**, or his/her designee, to act as its representative for the performance of this Agreement ("Consultant's Representative"). Consultant's Representative shall have full authority to represent and act on behalf of the Consultant for all purposes under this Agreement. The Consultant's Representative shall supervise and direct the Services, using his/her best skill and attention, and shall be responsible for all means, methods, techniques, sequences, and procedures and for the satisfactory coordination of all portions of the Services under this Agreement.

3.2.7 Coordination of Services. Consultant agrees to work closely with City staff in the performance of Services and shall be available to City's staff, consultants and other staff at all reasonable times.

3.2.8 Standard of Care; Performance of Employees. Consultant shall perform all Services under this Agreement in a skillful and competent manner, consistent with the standards generally recognized as being employed by professionals in the same discipline in the State of California. Consultant represents and maintains that it is skilled in the professional calling necessary to perform the Services. Consultant warrants that all employees and subconsultants shall have sufficient skill and experience to perform the Services assigned to them. Finally, Consultant represents that it, its employees and subconsultants have all licenses, permits, qualifications and approvals of whatever nature that are legally required to perform the Services, and that such licenses and approvals shall be maintained throughout the term of this Agreement. As provided for in the indemnification provisions of this Agreement, Consultant shall perform, at its own cost and expense and without reimbursement from the City, any services necessary to correct errors or omissions which are caused by the Consultant's failure to comply with the standard of care provided for herein. Any employee of the Consultant or its subconsultants who is determined by the City to be uncooperative, incompetent, a threat to the adequate or timely completion of the Project, a threat to the safety of persons or property, or any employee who fails or refuses to perform the

Services in a manner acceptable to the City, shall be promptly removed from the Project by the Consultant and shall not be re-employed to perform any of the Services or to work on the Project.

3.2.9 Laws and Regulations. Consultant shall keep itself fully informed of and in compliance with all local, state and federal laws, rules and regulations in any manner affecting the performance of the Project or the Services, including all Cal/OSHA requirements, and shall give all notices required by law. Consultant shall be liable for all violations of such laws and regulations in connection with Services. If Consultant performs any work knowing it to be contrary to such laws, rules and regulations, Consultant shall be solely responsible for all costs arising therefrom. Consultant shall defend, indemnify and hold City, its officials, directors, officers, employees, agents, and volunteers free and harmless, pursuant to the indemnification provisions of this Agreement, from any claim or liability arising out of any failure or alleged failure to comply with such laws, rules or regulations.

3.2.10 Insurance. **[CITY RISK MANAGER TO REVIEW PRIOR TO EACH USE]**

3.2.10.1 Time for Compliance. Consultant shall not commence work under this Agreement until it has provided evidence satisfactory to the City that it has secured all insurance required under this section. In addition, Consultant shall not allow any subconsultant to commence work on any subcontract until it has provided evidence satisfactory to the City that the subconsultant has secured all insurance required under this section.

3.2.10.2 Types of Insurance Required. As a condition precedent to the effectiveness of this Agreement for work to be performed hereunder, and without limiting the indemnity provisions of the Agreement, the Consultant, in partial performance of its obligations under such Agreement, shall procure and maintain in full force and effect during the term of the Agreement the following policies of insurance. If the existing policies do not meet the insurance requirements set forth herein, Consultant agrees to amend, supplement or endorse the policies to do so.

(A) Commercial General Liability: Commercial General Liability Insurance which affords coverage at least as broad as Insurance Services Office "occurrence" form CG 0001, or the exact equivalent, and shall be no less than \$1,000,000 per occurrence and no less than \$2,000,000 in the general aggregate. Defense costs shall be paid in addition to the limits. The policy shall contain no endorsements or provisions limiting coverage for (1)

contractual liability; (2) cross liability exclusion for claims or suits by one insured against another; or (3) contain any other exclusion contrary to the Agreement.

(B) Automobile Liability Insurance: Automobile Liability Insurance with coverage at least as broad as Insurance Services Office Form CA 0001 covering "Any Auto" (Symbol 1), or the exact equivalent, covering bodily injury and property damage for all activities shall be in an amount of not less than \$1,000,000 combined limit for each occurrence. *****NOTE: If Consultant does not own any company vehicles or may not be able to purchase a Business Automobile Insurance Policy, the requirement may be satisfied by providing either of the following:** (1) a Personal Automobile Liability policy for the Consultant's own vehicle stipulating "Automobile Liability Insurance with a limit of not less than \$1,000,000 each accident"; or (2) a non-owned auto endorsement to the Commercial General Liability policy if Consultant uses vehicles of others (e.g., vehicles of employees). **ALWAYS DELETE THIS SECTION IF NOT USED.***]**

(C) Workers' Compensation: Workers' Compensation Insurance, as required by the State of California and Employer's Liability Insurance with a limit of not less than \$1,000,000 per accident for bodily injury and disease.

(D) Professional Liability: Professional Liability insurance with minimum limits of \$1,000,000. Covered professional services shall specifically include all work to be performed under the Agreement and delete any exclusions that may potentially affect the work to be performed (for example, any exclusions relating to lead, asbestos, pollution, testing, underground storage tanks, laboratory analysis, soil work, etc.). If coverage is written on a claims-made basis, the retroactive date shall precede the effective date of the initial Agreement and continuous coverage will be maintained or an extended reporting period will be exercised for a period of at least three (3) years from termination or expiration of this Agreement.

[OPTIONAL: include the following provision if there is a pollution liability exposure; otherwise, always delete.]

(E) Pollution Liability:

Pollution Liability Insurance covering all of the consultant's operations to include onsite and offsite coverage for bodily injury (including death and mental anguish), property damage, defense costs and cleanup costs with minimum limits of \$5 million per loss and \$10 million total all losses. The policy

shall contain no endorsements or provisions limiting contractual liability or coverage for cross liability of claims or suits by one insured against another.

If coverage is written on a claims-made basis, the retroactive date shall precede the effective date of the initial Agreement and continuous coverage will be maintained or an extended reporting period will be exercised for a period of at least three (3) years from termination or expiration of this Agreement. **[ALWAYS DELETE IF NOT USED]**

3.2.10.3 Endorsements. Required insurance policies shall not be in compliance if they include any limiting provision or endorsement that has not been submitted to the City for approval.

(A) The policy or policies of insurance required by Section 3.2.10.2(A), Commercial General Liability **[INSERT "and 3.2.10.2(E), Pollution Liability"; OTHERWISE, ALWAYS DELETE]**, shall be endorsed to provide the following:

- (1) Additional Insured: The City, its officials, officers, employees, agents, and volunteers shall be additional insureds with regard to liability and defense of suits or claims arising out of the performance of the Agreement.

Additional Insured Endorsements shall not (1) be restricted to "ongoing operations"; (2) exclude "contractual liability"; (3) restrict coverage to "sole" liability of Consultant; or (4) contain any other exclusions contrary to the Agreement.

- (2) Cancellation: Required insurance policies shall not be canceled or the coverage reduced until a thirty (30) day written notice of cancellation has been served upon the City except ten (10) days shall be allowed for non-payment of premium.

(B) The policy or policies of insurance required by Section 3.2.10.2(B) Automobile Liability, and Section 3.2.10.2(D) Professional Liability, shall be endorsed to provide the following:

- (1) Cancellation: Required insurance policies shall not be canceled or the coverage reduced until a thirty (30) day written notice of cancellation has been served upon the

City except ten (10) days shall be allowed for non-payment of premium.

(C) The policy or policies of insurance required by Section 3.2.10.2(C), Workers' Compensation, shall be endorsed to provide the following:

- (1) Waiver of Subrogation: A waiver of subrogation stating that the insurer waives all rights of subrogation against the indemnified parties.
- (2) Cancellation: Required insurance policies shall not be canceled or the coverage reduced until a thirty (30) day written notice of cancellation has been served upon the City except ten (10) days shall be allowed for non-payment of premium.

3.2.10.4 Primary and Non-Contributing Insurance. All insurance coverages shall be primary and any other insurance, deductible, or self-insurance maintained by the indemnified parties shall not contribute with this primary insurance. Policies shall contain or be endorsed to contain such provisions.

3.2.10.5 Waiver of Subrogation. Required insurance coverages shall not prohibit Consultant from waiving the right of subrogation prior to a loss. Consultant shall waive all subrogation rights against the indemnified parties. Policies shall contain or be endorsed to contain such provisions.

3.2.10.6 Deductible. Any deductible or self-insured retention must be approved in writing by the City and shall protect the indemnified parties in the same manner and to the same extent as they would have been protected had the policy or policies not contained a deductible or self-insured retention.

3.2.10.7 Evidence of Insurance. The Consultant, concurrently with the execution of the Agreement, and as a condition precedent to the effectiveness thereof, shall deliver either certified copies of the required policies, or original certificates and endorsements on forms approved by the City. The certificates and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf. At least fifteen (15 days) prior to the expiration of any such policy, evidence of insurance showing that such insurance coverage has been renewed or extended shall be filed with the City. If such coverage is cancelled or reduced, Consultant shall, within ten (10) days after receipt of written notice of such cancellation or

reduction of coverage, file with the City evidence of insurance showing that the required insurance has been reinstated or has been provided through another insurance company or companies.

3.2.10.8 Failure to Maintain Coverage. Consultant agrees to suspend and cease all operations hereunder during such period of time as the required insurance coverage is not in effect and evidence of insurance has not been furnished to the City. The City shall have the right to withhold any payment due Consultant until Consultant has fully complied with the insurance provisions of this Agreement. In the event that the Consultant's operations are suspended for failure to maintain required insurance coverage, the Consultant shall not be entitled to an extension of time for completion of the Services because of production lost during suspension.

3.2.10.9 Acceptability of Insurers. Each such policy shall be from a company or companies with a current A.M. Best's rating of no less than A:VII and authorized to do business in the State of California, or otherwise allowed to place insurance through surplus line brokers under applicable provisions of the California Insurance Code or any federal law.

3.2.10.10 Insurance for Subconsultants. All Subconsultants shall be included as additional insureds under the Consultant's policies, or the Consultant shall be responsible for causing Subconsultants to purchase the appropriate insurance in compliance with the terms of these Insurance Requirements, including adding the City as an Additional Insured to the Subconsultant's policies. Consultant shall provide to City satisfactory evidence as required under Section 3.2.10.1 of this Agreement.

3.2.11 Safety. Consultant shall execute and maintain its work so as to avoid injury or damage to any person or property. In carrying out its Services, the Consultant shall at all times be in compliance with all applicable local, state and federal laws, rules and regulations, and shall exercise all necessary precautions for the safety of employees appropriate to the nature of the work and the conditions under which the work is to be performed. Safety precautions, where applicable, shall include, but shall not be limited to: (A) adequate life protection and life saving equipment and procedures; (B) instructions in accident prevention for all employees and subconsultants, such as safe walkways, scaffolds, fall protection ladders, bridges, gang planks, confined space procedures, trenching and shoring, equipment and other safety devices, equipment and wearing apparel as are necessary or lawfully required to prevent accidents or injuries; and (C) adequate facilities for the proper inspection and maintenance of all safety measures.

3.2.12 Water Quality Management and Compliance.

3.2.12.1 Storm Water Management. Storm, surface, nuisance, or other waters may be encountered at various times during the Services. Consultant hereby acknowledges that it has investigated the risk arising from such waters, and assumes any and all risks and liabilities arising therefrom.

3.2.12.2 Compliance with Water Quality Laws, Ordinances and Regulations. Consultant shall keep itself and all subcontractors, staff, and employees fully informed of and in compliance with all local, state and federal laws, rules and regulations that may impact, or be implicated by the performance of the Services including, without limitation, all applicable provisions of the City's ordinances regulating water quality and storm water; the Federal Water Pollution Control Act (33 U.S.C. §§ 1300); the California Porter-Cologne Water Quality Control Act (Cal Water Code §§ 13000-14950); and any and all regulations, policies, or permits issued pursuant to any such authority. Consultant shall additionally comply with the lawful requirements of the City, and any other municipality, drainage district, or other local agency with jurisdiction over the location where the Services are to be conducted, regulating water quality and storm water discharges.

3.2.12.3 Compliance with DAMP and LIP. In addition to compliance with the laws, ordinances and regulations listed in Section 3.2.12.2 of this Agreement, Consultant shall comply with all applicable requirements of the Orange County Drainage Area Management Plan ("DAMP") and the City of Lake Forest Local Implementation Plan ("LIP"). Sections 5, 7, and 8 of the DAMP contain requirements related to design and construction of public projects. Consultant shall be familiar the DAMP, and the LIP and shall comply with the requirements as specified therein. A copy of the DAMP is available on the internet at:

http://www.ocwatersheds.com/StormWater/documents_damp.asp

3.2.12.4 Standard of Care. Consultant warrants that all employees and subcontractors shall have sufficient skill and experience to perform the work assigned to them without impacting water quality in violation of the laws, regulations and policies described in Sections 3.2.12.2 and 3.2.12.3 of this Agreement. Consultant further warrants that it, its employees and subcontractors have or will receive adequate training, as determined by the City, regarding these requirements as they may relate to the Services.

3.2.12.5 Liability for Non-compliance.

(A) Indemnity: Failure to comply with laws, regulations, and ordinances listed in Sections 3.2.12.2 and 3.2.12.3 of this Agreement is a violation of

federal and state law. Notwithstanding any other indemnity contained in this Agreement, Consultant agrees to indemnify and hold harmless the City, its officials, officers, agents, employees and authorized volunteers from and against any and all claims, demands, losses or liabilities of any kind or nature which the City, its officials, officers, agents, employees and authorized volunteers may sustain or incur for noncompliance with the laws, regulations, and ordinances listed above, arising out of or in connection with the Services, except for liability resulting from the sole established negligence, willful misconduct or active negligence of the City, its officials, officers, agents, employees or authorized volunteers.

(B) Defense: City reserves the right to defend any enforcement action or civil action brought against the City for Consultant's failure to comply with any applicable water quality law, regulation, or policy. Consultant hereby agrees to be bound by, and to reimburse the City for the costs associated with, any settlement reached between the City and the relevant enforcement entity.

(C) Damages: City may seek damages from Consultant for delay in completing the Services caused by Consultant's failure to comply with the laws, regulations and policies described in Sections 3.2.12.2 and 3.2.12.3 of this Agreement, or any other relevant water quality law, regulation, or policy.

3.3 Fees and Payments.

3.3.1 Compensation. Consultant shall receive compensation, including authorized reimbursements, for all Services rendered under this Agreement at the rates set forth in Exhibit "C" attached hereto and incorporated herein by reference. The total compensation shall not exceed **[INSERT AMOUNT WRITTEN OUT] (\$[INSERT NUMBER])** without written approval of the City Council or City Manager as applicable. Extra Work may be authorized, as described below, and if authorized, will be compensated at the rates and manner set forth in this Agreement.

3.3.2 Payment of Compensation. Consultant shall submit to City a monthly invoice which indicates work completed and hours of Services rendered by Consultant. The invoice shall describe the amount of Services provided since the initial commencement date, or since the start of the subsequent billing periods, as appropriate, through the date of the invoice. City shall, within 30 days of receiving such invoice, review the invoice and pay all non-disputed and approved charges thereon. If the City disputes any of Consultant's fees, the City shall give written notice to Consultant within thirty (30) days of receipt of an invoice of any disputed fees set forth therein.

3.3.3 Reimbursement for Expenses. Consultant shall not be reimbursed for any expenses unless authorized in writing by City, or included in Exhibit "C" of this Agreement.

3.3.4 Extra Work. At any time during the term of this Agreement, City may request that Consultant perform Extra Work. As used herein, "Extra Work" means any work which is determined by City to be necessary for the proper completion of the Project, but which the Parties did not reasonably anticipate would be necessary at the execution of this Agreement. Consultant shall not perform, nor be compensated for, Extra Work without written authorization from the City. For agreements in excess of \$30,000.00, the City Manager may approve additional work not to exceed 10% of the original Agreement compensation, **(insert 10% dollar amount (\$XXXXX))**, as set forth in Section 3.3.1. Any additional work in excess of this amount shall be approved by the City Council.

[Small Dollar – Insert this in place of second to last sentence, otherwise delete: The City Manager may approve Extra Work not to exceed a total contract amount of thirty thousand dollars (\$30,000). Any Extra Work which causes the total contract amount to exceed thirty thousand dollars (\$30,000) shall be approved by the City Council.]

3.3.5 Rate Increases. In the event that this Agreement is renewed pursuant to Section 3.1.2, the rate set forth in Exhibit "C" may be adjusted each year at the time of renewal as set forth in Exhibit "C."

3.3.6 Prevailing Wages. Consultant is aware of the requirements of California Labor Code Section 1720, et seq., and 1770, et seq., as well as California Code of Regulations, Title 8, Section 16000, et seq., ("Prevailing Wage Laws"), which require the payment of prevailing wage rates and the performance of other requirements on "public works" and "maintenance" projects. **[INSERT "If" or "Since"]** the Services are being performed as part of an applicable "public works" or "maintenance" project, as defined by the Prevailing Wage Laws, and **[INSERT "If" or "Since"]** the total compensation is \$1,000 or more, Consultant agrees to fully comply with such Prevailing Wage Laws. City shall provide Consultant with a copy of the prevailing rates of per diem wages in effect at the commencement of this Agreement. Consultant shall make copies of the prevailing rates of per diem wages for each craft, classification or type of worker needed to execute the Services available to interested parties upon request, and shall post copies at the Consultant's principal place of business and at the project site. Consultant shall defend, indemnify and hold the City, its officials, officers, employees, agents, and volunteers free and harmless from any claim or liability

arising out of any failure or alleged failure to comply with the Prevailing Wage Laws.

3.4 Accounting Records.

3.4.1 Maintenance and Inspection. Consultant shall maintain complete and accurate records with respect to all costs and expenses incurred under this Agreement. All such records shall be clearly identifiable. Consultant shall allow a representative of City during normal business hours to examine, audit, and make transcripts or copies of such records and any other documents created pursuant to this Agreement. Consultant shall allow inspection of all work, data, documents, proceedings, and activities related to the Agreement for a period of three (3) years from the date of final payment under this Agreement.

3.5 General Provisions.

3.5.1 Termination of Agreement.

3.5.1.1 Grounds for Termination. City may, by written notice to Consultant, terminate the whole or any part of this Agreement at any time and without cause by giving written notice to Consultant of such termination, and specifying the effective date thereof, at least seven (7) days before the effective date of such termination. Upon termination, Consultant shall be compensated only for those services which have been adequately rendered to City, and Consultant shall be entitled to no further compensation. Consultant may not terminate this Agreement except for cause.

3.5.1.2 Effect of Termination. If this Agreement is terminated as provided herein, City may require Consultant to provide all finished or unfinished Documents and Data and other information of any kind prepared by Consultant in connection with the performance of Services under this Agreement. Consultant shall be required to provide such document and other information within fifteen (15) days of the request.

3.5.1.3 Additional Services. In the event this Agreement is terminated in whole or in part as provided herein, City may procure, upon such terms and in such manner as it may determine appropriate, services similar to those terminated.

3.5.2 Delivery of Notices. All notices permitted or required under this Agreement shall be given to the respective parties at the following address, or at such other address as the respective parties may provide in writing for this purpose:

Consultant: **[INSERT BUSINESS NAME]**
[INSERT STREET ADDRESS]
[INSERT CITY STATE ZIP]
ATTN: **[INSERT NAME AND TITLE]**

City: City of Lake Forest
25550 Commercentre Drive, Suite 100
Lake Forest, CA 92630
ATTN: **[INSERT NAME AND TITLE]**

Such notice shall be deemed made when personally delivered or when mailed, forty-eight (48) hours after deposit in the U.S. Mail, first class postage prepaid and addressed to the party at its applicable address. Actual notice shall be deemed adequate notice on the date actual notice occurred, regardless of the method of service.

3.5.3 Ownership of Materials and Confidentiality.

3.5.3.1 Documents & Data; Licensing of Intellectual Property. This Agreement creates a non-exclusive and perpetual license for City to copy, use, modify, reuse, or sublicense any and all copyrights, designs, and other intellectual property embodied in plans, specifications, studies, drawings, estimates, and other documents or works of authorship fixed in any tangible medium of expression, including but not limited to, physical drawings or data magnetically or otherwise recorded on computer diskettes, which are prepared or caused to be prepared by Consultant under this Agreement ("Documents & Data"). Consultant shall require all subconsultants to agree in writing that City is granted a non-exclusive and perpetual license for any Documents & Data the subconsultant prepares under this Agreement. Consultant represents and warrants that Consultant has the legal right to license any and all Documents & Data. Consultant makes no such representation and warranty in regard to Documents & Data which were prepared by design professionals other than Consultant or provided to Consultant by the City. City shall not be limited in any way in its use of the Documents & Data at any time, provided that any such use not within the purposes intended by this Agreement shall be at City's sole risk.

3.5.3.2 Confidentiality. All ideas, memoranda, specifications, plans, procedures, drawings, descriptions, computer program data, input record data, written information, and other Documents & Data either created by or provided to Consultant in connection with the performance of this Agreement shall be held confidential by Consultant. Such materials shall not, without the prior written consent of City, be used by Consultant for any purposes

other than the performance of the Services. Nor shall such materials be disclosed to any person or entity not connected with the performance of the Services or the Project. Nothing furnished to Consultant which is otherwise known to Consultant or is generally known, or has become known, to the related industry shall be deemed confidential. Consultant shall not use City's name or insignia, photographs of the Project, or any publicity pertaining to the Services or the Project in any magazine, trade paper, newspaper, television or radio production or other similar medium without the prior written consent of City.

3.5.3.3 Confidential Information. The City shall refrain from releasing Consultant's proprietary information ("Proprietary Information") unless the City's legal counsel determines that the release of the Proprietary Information is required by the California Public Records Act or other applicable state or federal law, or order of a court of competent jurisdiction, in which case the City shall notify Consultant of its intention to release Proprietary Information. Consultant shall have five (5) working days after receipt of the Release Notice to give City written notice of Consultant's objection to the City's release of Proprietary Information. Consultant shall indemnify, defend and hold harmless the City, and its officers, directors, employees, and agents from and against all liability, loss, cost or expense (including attorney's fees) arising out of a legal action brought to compel the release of Proprietary Information. City shall not release the Proprietary Information after receipt of the Objection Notice unless either: (1) Consultant fails to fully indemnify, defend (with City's choice of legal counsel), and hold City harmless from any legal action brought to compel such release; and/or (2) a final and non-appealable order by a court of competent jurisdiction requires that City release such information.

3.5.4 Harassment Policy. Consultant shall provide a copy of the City's Harassment Policy to each of its employees assigned to perform the tasks under this Agreement. Consultant shall submit to the City's Personnel Manager a statement signed by each of its employees who are assigned to perform the Services under this Agreement certifying receipt of City's Harassment Policy and certifying that they have read the Harassment Policy. A finding by the City that any of Consultant's employees has harassed a City employee shall be grounds for appropriate discipline, up to and including such employee's removal from performance of this Agreement at City's request.

3.5.5 Fraud Policy. Consultant shall provide a copy of the City's Fraud Policy to each of its employees assigned to perform the tasks under this Agreement. Consultant shall submit to the City's Personnel Manager a statement signed by Consultant and by each of its employees who are assigned to perform the Services under this Agreement certifying receipt of City's Fraud Policy and certifying that they have read the Fraud Policy. A finding by the City

that any of Consultant's employees have committed fraud against the City shall be grounds for appropriate discipline, up to and including such employee's removal from performance of this Agreement at City's request. Consultant shall reimburse the City for any costs and expenses associated with fraud against the City.

3.5.6 Cooperation; Further Acts. The Parties shall fully cooperate with one another, and shall take any additional acts or sign any additional documents as may be necessary, appropriate or convenient to attain the purposes of this Agreement.

3.5.7 Attorney's Fees. If either party commences an action against the other party, either legal, administrative or otherwise, arising out of or in connection with this Agreement, the prevailing party in such litigation shall be entitled to have and recover from the losing party reasonable attorney's fees and all other costs of such action.

3.5.8 Indemnification.

3.5.8.1 Scope of Indemnity. To the fullest extent permitted by law, Consultant shall defend, indemnify and hold the City, its directors, officials, officers, employees, volunteers and agents free and harmless from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury of any kind, in law or equity, to property or persons, including wrongful death, in any manner arising out of, pertaining to, or incident to any alleged acts, errors or omissions, or willful misconduct of Consultant, its officials, officers, employees, subcontractors, consultants or agents in connection with the performance of the Consultant's Services, the Project or this Agreement, including without limitation the payment of all consequential damages, expert witness fees and attorneys fees and other related costs and expenses. Notwithstanding the foregoing, to the extent Consultant's Services are subject to Civil Code Section 2782.8, the above indemnity shall be limited, to the extent required by Civil Code Section 2782.8, to claims that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Consultant.

3.5.8.2 Additional Indemnity Obligations. To the fullest extent permitted by law, Consultant shall defend, with counsel of City's choosing and at Consultant's own cost, expense and risk, any and all claims, suits, actions or other proceedings of every kind covered by Section 3.5.8.1 that may be brought or instituted against City or its directors, officials, officers, employees, volunteers and agents. Consultant shall pay and satisfy any judgment, award or decree that may be rendered against City or its directors, officials, officers, employees, volunteers and agents as part of any such claim, suit, action or other

proceeding. Consultant shall also reimburse City for the cost of any settlement paid by City or its directors, officials, officers, employees, agents or volunteers as part of any such claim, suit, action or other proceeding. Such reimbursement shall include payment for City's attorney's fees and costs, including expert witness fees. Consultant shall reimburse City and its directors, officials, officers, employees, agents, and/or volunteers, for any and all legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity herein provided. Consultant's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by the City, its directors, officials officers, employees, agents, or volunteers.

3.5.9 Entire Agreement. This Agreement contains the entire Agreement of the parties with respect to the subject matter hereof, and supersedes all prior negotiations, understandings or agreements. This Agreement may only be modified by a writing signed by both parties.

3.5.10 Governing Law. This Agreement shall be governed by the laws of the State of California. Venue shall be in Orange County.

3.5.11 Time of Essence. Time is of the essence for each and every provision of this Agreement.

3.5.12 City's Right to Employ Other Consultants. City reserves right to employ other consultants in connection with this Project.

3.5.13 Successors and Assigns. This Agreement shall be binding on the successors and assigns of the parties.

3.5.14 Assignment or Transfer. Consultant shall not assign, hypothecate, or transfer, either directly or by operation of law, this Agreement or any interest herein without the prior written consent of the City. Any attempt to do so shall be null and void, and any assignees, hypothecates or transferees shall acquire no right or interest by reason of such attempted assignment, hypothecation or transfer.

3.5.15 Construction; References; Captions. Since the Parties or their agents have participated fully in the preparation of this Agreement, the language of this Agreement shall be construed simply, according to its fair meaning, and not strictly for or against any Party. Any term referencing time, days or period for performance shall be deemed calendar days and not work days. All references to Consultant include all personnel, employees, agents, and subconsultants of Consultant, except as otherwise specified in this Agreement. All references to City include its elected officials, officers, employees, agents,

and volunteers except as otherwise specified in this Agreement. The captions of the various articles and paragraphs are for convenience and ease of reference only, and do not define, limit, augment, or describe the scope, content, or intent of this Agreement.

3.5.16 Amendment; Modification. No supplement, modification, or amendment of this Agreement shall be binding unless executed in writing and signed by both Parties.

3.5.17 Waiver. No waiver of any default shall constitute a waiver of any other default or breach, whether of the same or other covenant or condition. No waiver, benefit, privilege, or service voluntarily given or performed by a Party shall give the other Party any contractual rights by custom, estoppel, or otherwise.

3.5.18 No Third-Party Beneficiaries. There are no intended third party beneficiaries of any right or obligation assumed by the Parties.

3.5.19 Invalidity; Severability. If any portion of this Agreement is declared invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect.

3.5.20 Prohibited Interests. Consultant maintains and warrants that it has not employed nor retained any company or person, other than a bona fide employee working solely for Consultant, to solicit or secure this Agreement. Further, Consultant warrants that it has not paid nor has it agreed to pay any company or person, other than a bona fide employee working solely for Consultant, any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, City shall have the right to rescind this Agreement without liability. For the term of this Agreement, no member, officer or employee of City, during the term of his or her service with City, shall have any direct interest in this Agreement, or obtain any present or anticipated material benefit arising therefrom.

3.5.21 Equal Opportunity Employment. Consultant represents that it is an equal opportunity employer and it shall not discriminate against any subconsultant, employee or applicant for employment because of race, religion, color, national origin, handicap, ancestry, sex or age. Such non-discrimination shall include, but not be limited to, all activities related to initial employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination. Consultant shall also comply with all relevant provisions of City's

Minority Business Enterprise program, Affirmative Action Plan or other related programs or guidelines currently in effect or hereinafter enacted.

3.5.22 Labor Certification. By its signature hereunder, Consultant certifies that it is aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for Worker's Compensation or to undertake self-insurance in accordance with the provisions of that Code, and agrees to comply with such provisions before commencing the performance of the Services.

3.5.23 Authority to Enter Agreement. Consultant has all requisite power and authority to conduct its business and to execute, deliver, and perform the Agreement. Each Party warrants that the individuals who have signed this Agreement have the legal power, right, and authority to make this Agreement and bind each respective Party.

3.5.24 Counterparts. This Agreement may be signed in counterparts, each of which shall constitute an original.

3.6 Subcontracting.

3.6.1 Prior Approval Required. Consultant shall not subcontract any portion of the work required by this Agreement, except as expressly stated herein, without prior written approval of City. Subcontracts, if any, shall contain a provision making them subject to all provisions stipulated in this Agreement.

CITY OF LAKE FOREST

[INSERT NAME]

By: _____
[Mayor or City Manager]

By: _____
[INSERT NAME AND TITLE]

[If Corporation, TWO SIGNATURES,
President **OR** Vice President **AND**
Secretary OR Treasurer REQUIRED]

Attest:

By: _____
[INSERT NAME AND TITLE]

By: _____
[INSERT NAME]
City Clerk

Approved as to Form:

By: _____
Best Best & Krieger LLP
City Attorney

EXHIBIT "A"
SCOPE OF SERVICES

EXHIBIT "A-I"
FEDERALLY REQUIRED PROVISIONS FOR SERVICES

**[INSERT FEDERALLY REQUIRED PROVISIONS TRIGGERED BY RECEIPT
OF FEDERAL FUNDS FOR THE SERVICES; OTHERWISE
ALWAYS DELETE ENTIRE EXHIBIT "A-I"]**

EXHIBIT "B"
SCHEDULE OF SERVICES

EXHIBIT "C"
COMPENSATION

[INSERT THE FOLLOWING PROVISION IF THE AGREEMENT WILL AUTOMATICALLY RENEW: In the event that this Agreement is renewed pursuant to Section 3.1.2, the rates set forth above may be increased or reduced each year at the time of renewal, but any increase shall not exceed the Consumer Price Index, All Urban Consumers, Los Angeles-Riverside-Orange Counties.]

APPENDIX B
SUMMARY SHEET

Firm Name: _____

Firm Parent or Ownership: _____

Firm Address: _____

Firm Telephone Number: _____

Firm Fax Number: _____

Number of years in existence: _____

Management Contact (person responsible for direct contact with the City of Lake Forest and services required for this Request for Proposal):

Name: _____ Title: _____

Telephone Number: _____ Fax: _____

Email: _____

Project Manager (Person responsible for day-to-day servicing of the account):

Name: _____ Title: _____

Telephone Number: _____ Fax: _____

Email: _____

Types of services provided by the firm: _____

APPENDIX C

CERTIFICATION OF PROPOSAL TO THE CITY OF LAKE FOREST

1. The undersigned hereby submits its proposal and, by doing so, agrees to furnish services to the City in accordance with the Request for Proposal (RFP), dated November 21, 2012, and to be bound by the terms and conditions of the RFP.
2. This firm has carefully reviewed its proposal and understands and agrees that the City is not responsible for any errors or omissions on the part of the proposer and that the proposer is responsible for them.
3. It is understood and agreed that the City reserves the right to accept or reject any or all proposals and to waive any informality or irregularity in any proposal received by the City.
4. The proposal includes all of the commentary, figures and data required by the Request for Proposal, dated November 21, 2012.
5. This firm has carefully read and fully understands all of the items contained in Section 7, General Requirements. This firm agrees to all of the general requirements except for those disclosed by the firm in project proposal, listed on an attachment.
6. The proposal shall be valid for 90 days from January 15, 2013.

Name of Firm: _____

By: _____
(Authorized Signature)

Type Name: _____

Title: _____

Date: _____

APPENDIX D

EVALUATION PROCEDURES

A. Selection Committee

Proposals submitted will be evaluated by a Selection Committee, appointed by the City Manager.

B. Review of Proposals

The Selection Committee will use a point formula during the review process to individually score Project Proposals, as outlined in Section C1 below, "Project Proposal Evaluation Criteria." The Selection Committee will then be convened to review and discuss these evaluations and combine the individual scores to arrive at an average composite Project Proposal score for each firm. Firms that do not meet "Mandatory Elements" listed in Section C1 below will be eliminated from further consideration.

After the composite Project Proposal score for each firm has been established based upon the "Qualitative Evaluation" criteria listed in Section C2, the Selection Committee may request oral presentations from a subset of those firms with a minimum score of 70 points. Based upon score rankings, the six (6) highest ranking firms may be interviewed. The Selection Committee may also schedule a site visit, if applicable. The sealed Cost Proposal of firms receiving a minimum score of 70 points on the qualitative review will be opened to ensure that the Cost Proposal is reasonable. A summary of all Project Proposals, qualifying on the basis of the qualitative review and interview, will be submitted, along with a summary of their respective Cost Proposals, to the City Council for final determination.

C. Project Proposal Evaluation Criteria

Proposals will be evaluated using three (3) sets of criteria. Firms meeting the mandatory elements will have their proposals evaluated and scored. The following represent the

principal selection criteria which will be considered during the evaluation process.

1. Mandatory Elements

- a. The firm is independent and properly licensed to practice in California.
- b. The firm has no conflict of interest with regard to any other work performed by the firm for the City.
- c. The firm adheres to the instructions in this RFP on preparing and submitting the proposal.
- d. The firm included a Letter of Transmittal in the Project Proposal.

2. Qualitative Evaluation (Maximum Points = 100)

In order to be considered the proposer must achieve at least 70 points. (Points will be assigned by the Department Director or Coordinator.)

- a. Expertise and Experience (40 points)
 - i. The firm's past experience and performance on comparable private/government engagements.
 - ii. The quality of the firm's professional personnel to be assigned to the engagement and the quality of the firm's management support personnel to be available for technical consultation.
 - iii. References relative to personnel assigned to this project.
 - iv. Understanding of work to be done.
 - v. Firm's statement on why it believes itself to be best qualified.

- b. Scope of Work (30 points)
 - i. Response to all items.
 - ii. Additional information.
- c. Allocation of Resources (30 points)
 - i. Appropriateness of services to the requirements of the City.
 - ii. Distinguishing features, skills and/or services.

D. Oral Presentations/Interviews

During the evaluation process, the Selection Committee may request oral presentations from a subset of those firms with a minimum score of 70 points. Oral presentations will provide firms with an opportunity to answer any questions the Selection Committee may have on a firm's Project Proposal.

The maximum points assigned to interviews shall be 100 points, the same number as the qualitative proposal. The equal point spread between the qualitative proposal and the interview is intended to balance a firm's written representation with their in-person representation of both personnel and end products. In addition, the interview process is a valuable tool to assess the communication skills and professional demeanor of proposed project personnel. The interview score is arrived at independently from the qualitative proposal score and the two may differ significantly. The interview portion allows staff greater flexibility to choose a qualified firm with strong communication skills and technical expertise.

E. Cost Proposal Evaluation

The Cost Proposal is opened for each firm who has received an average score of at least 70 points after the qualitative review and the oral presentation. The Cost Proposal of the top ranked firm is evaluated to determine if it is reasonable. The

primary tests of reasonableness are comparison to the City's estimated project cost and the City's project budget. Additional factors include prior experience, comparative costs in neighboring or other relevant communities, professional judgment and comparison to the costs submitted by qualified vendors for the proposed project.

F. Final Selection

The Selection Committee will recommend a firm for selection to the Department Director named in Section 1 of the RFP. The Agreement must be fully executed by the firm prior to Department Director recommendation for contract award to the City Council. The City, through the Department Director, reserves the right to negotiate the price, terms and scope of work with the successful proposer prior to making a recommendation to the City Council.